

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ALEXANDER ANDERSON,

Plaintiff, **[PROPOSED] JOINT
PRE-TRIAL ORDER**

-against-

16 Civ. 1051 (GBD) (KHP)

NEW YORK CITY HEALTH AND HOSPITALS
CORPORATION and ATHENA MOTAL,

Defendants.
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Plaintiff Alexander Anderson and Defendants New York City Health and Hospitals Corporation (“H+H”) and Athena Motal (“Motal” and collectively “Defendants”) submit this Joint Pretrial Order pursuant to Rule 26(a)(3) of the Federal Rules of Civil Procedure and Section VI of Judge Daniels’ Individual Rules and Practices in Civil Cases.

i. Full Caption of the Action

The full caption appears above.

ii. Trial Counsel

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Defendants:

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iii. Subject Matter Jurisdiction

- a. **Plaintiff's Statement:** This Court has jurisdiction over this controversy pursuant to 28 U.S.C. § 1331, § 1343 and 42 U.S.C. §2000e et. seq., 42 U.S.C. § 1983 and has supplemental jurisdiction over Plaintiffs' state law claims pursuant to 28 U.S.C. §1367.
- b. **Defendants' Statement:** Defendants do not dispute subject matter jurisdiction.

iv. Claims and Defenses

a. Plaintiff's Claims:

Claims to be Tried

- i. NYCHRL claim against HHC and Motal for their discriminatory failure to promote Plaintiff to Social Worker Level III in the MCU in 2014. Title VII claims relate to race, color, sex and the intersection of race and sex. NYCHRL claims based on race, color, gender, age and the intersection of race and gender;
- ii. Title VII and NYCHRL claims against HHC for its discriminatory failure to promote him to Social Worker Level III in the MICA program in 2015. Title VII claims relate to race, color, sex and the intersection of race and sex. NYCHRL claims based on race, color, gender, age and the intersection of race and gender
- iii. Title VII and NYCHRL retaliation claims against HHC and Motal with respect to the denial of his promotions to the MCU and MICA positions in 2014, and against HHC only with respect to the denial of his promotion to the MICA position in 2015.;

- iv. NYCHRL retaliation claim against HHC and Motal with respect to the verbal counseling, removal of his PASA supervisory duties, and delay in his promotion to Social Worker Level II; and
- v. Title VII and NYCHRL retaliation claims against HHC and Motal with respect to his transfer to the Inpatient Psychiatric Unit, denial of the ability to work with the substance abuse community, assignment of additional work, refusal of his request to transfer out of the Psychiatric Unit or to another hospital, denial of weekly clinical supervision and of requested vacation time, threats of discipline for fabricated attendance issues, and failure to investigate his claims of discrimination.

Claims that Will Not be Tried

- i. Disability discrimination in violation of the New York City Human Rights Law in violation of NYCHRL §8-107 (15) and (28) (9th Cause of Action).

b. Defendant's Defenses:

- i. On March 31, 2020, the Court granted Defendant's Motion for Summary Judgment with regard to all claims except "Plaintiffs alleged (1) NYCHRL claim against HH[C] and Motal for their discriminatory failure to promote Plaintiff to Social Worker Level III in the MCU in 2014; (2) Title VII and NYCHRL claims against HHS for its discriminatory failure to promote him to Social Worker Level III in the MICA program in 2015; (3) Title VII and NYCHRL retaliation claims against HHC and Motal with respect to the denial of his promotions to the MCU and MICA positions in 2014, and against HHC only with respect to the denial of

his promotion to the MICA position in 2015; (4) NYCHRL retaliation claim against HHC and Motal with respect to the verbal counseling, removal of his PASA supervisory duties, and delay in his promotion to Social Worker Level II; and (5) Title VII and NYCHRL retaliation claims against HHC and Motal with respect to his transfer to the Inpatient Psychiatric Unit, denial of the ability to work with the substance abuse community, assignment of additional work, refusal of his request to transfer out of the Psychiatric Unit or to another hospital, denial of weekly clinical supervision and of requested vacation time, threats of discipline for fabricated attendance issues, and failure to investigate his claims of discrimination.” See Memorandum Decision and Order dated March 31, 2020 (ECF Dkt. No. 203), adopting Report and Recommendation of Magistrate Judge Katherine H. Parker dated March 2, 2020 (ECF Dkt. No. 193). Accordingly, Plaintiff’s other claims as pleaded in the Second Amended Complaint (ECF Dkt. No. 85), including but not limited to Plaintiff’s disability discrimination claims premised upon a failure to accommodate, are not to be tried.

- ii. The complaint fails to state a claim.
- iii. Plaintiff fails to establish a *prima facie* case of race, sex, or age discrimination, or retaliation.
- iv. Defendants had legitimate, non-discriminatory and non-retaliatory business reasons for undertaking any of the actions complained of herein.
- v. Plaintiff cannot demonstrate that the above-referenced good faith, non-discriminatory and non-retaliatory business reasons proffered by Defendants are

false or pretextual, and that the real reason(s) for Defendants' conduct was discrimination or retaliation.

- vi. Plaintiff's claim for damages is barred, in whole or in part, because Plaintiff has incurred no damages and/or has failed to mitigate his damages.

v. **Trial by Jury and Duration**

- a. **Plaintiff's Statement:** The case is to be tried with a jury. Plaintiff estimates that his direct examination will take four days. Defendants estimate that their cross examination of plaintiff's witnesses and direct examination of their own witnesses will take an additional one or two days.
- b. **Defendants' Statement:** The case is to be tried to a jury. Defendants request four to five trial days, and believe that Plaintiff's estimated length of trial as set forth above, as well as Plaintiff's identification of 23 witnesses for trial, are disproportionate to the needs of the remaining claims in this case.

vi. Magistrate Judge

The parties do not consent to trial by a Magistrate Judge.

vii. Stipulated or Agreed Statements of Fact and Law

There are no agreed-upon stipulations or statements of fact or law.

viii. Witnesses

Witness Name	In Person/by Deposition
Plaintiff's Witnesses:¹	
Alex Aleman	In Person
Dr. Judith Branche	In Person
Annette Burwell	In Person
Miriam Carasa	In Person
Helen Esanbor	In Person
Annette Goodman-Anderson	In Person
Dr. Luz Green	In Person
Maria Kazaki-Maher	In Person
David Matthews	In Person
Lea Kobayashi-Moore	In Person
Christina Laboy	In Person
Barbara Marrero	In Person
William Marshall	In Person
David Mathews	In Person

¹ Plaintiff reserves the right to call any individual on Defendants' trial witness list and also to call any witnesses for impeachment or rebuttal.

Dr. Abdul Mondul	In Person
Athena Motal	In Person
Dwayne Murray	In Person
David Nadal	In Person
Nicole Phillips	In Person
Nicole Robinson	In Person
Dr. Yvonne Rountree	In Person
Andre Smith	In Person
Milly Toro	In Person
Defendant's Witnesses²:	
Athena Motal	In Person
Lilyn Hill	In Person
Nicole Robinson	In Person
Milly Toro	In Person
Maria Kazaki-Maher	In Person
William Marshall	In Person
Nicole Phillips	In Person
Helen Esanbor	In Person
Miriam Carasa	In Person
Manasses Williams	In Person

² Defendants reserve the right to call any individual listed on Plaintiff's trial witness list herein. Defendants reserve the right to call witnesses for purposes of impeachment or rebuttal.

David Nadal	In Person
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ix. Deposition Designations

Plaintiff does not designate any deposition testimony for trial as all witnesses are expected to be available for trial.

Defendants do not anticipate using any deposition testimony other than for rebuttal and/or impeachment purposes. Defendants object to Plaintiff offering deposition testimony during his case in chief unless he has established that the witness is unavailable pursuant to Fed. R. Civ. P. 32(a)(4). Defendants respectfully request the ability to submit cross-designations of deposition testimony at the time that any individual is deemed “unavailable” by the Court. Defendants also reserve the right to use in its case-in-chief the deposition of any witness who is unavailable pursuant to Fed. R. Civ. P. 32(4) and Fed. R. Evid. 804(b)(1).

x. Exhibit List

Plaintiff’s Exhibits³:

No.	Description	Bates Stamp Prefix	Pages	Objections	Basis
1	Applicant Referral - Erickson - Erickson - 3-13-14	Anderson_D	405	**	
2	Applicant Referral - Horowitz - Motal - 5-13-14	Anderson_D	3607	**	
3	Applicant Referral - Jones-Burton	Anderson_D	3549	**	
4	Application - MCU - Anderson 2014	Anderson_D	1812	**	

³ Defendants object to the admission of any exhibit for which a proper foundation has not been laid at the time of trial, even those exhibits which Defendants do not dispute are authentic and/or otherwise admissible. Defendants further object to any exhibit Plaintiff seeks to introduce during his case-in-chief which was not identified in this proposed exhibit list. Furthermore, while Plaintiff has provided identification for most of exhibits based on Bates stamps, Plaintiff has not provided copies of any pre-marked exhibits and the Defendants reserve their right to further objections upon receipt of pre-marked exhibits.

5	Article - Effective Clinical Supervision	Anderson	1513-1515		FRE 402, 403, 802
6	CASAC Counselor	NONE			FRE 402, 403, 802
7	Certificates	Anderson	344-345		FRE 402, 403, 802
8	Documents related to Promotion to SW Level II	Anderson_D	3732-3744	*	FRE 402, 403
9	EEO Policy Statements - Williams 11/12/08	Anderson_D	233-237	*	FRE 402, 403
10	Email - 2014-12-2- Anderson to Carasa, Nadal, Villanueva re: retaliation and discrimination	Anderson	507		FRE 402, 802
11	Email - 2014-3-27 - Anderson to Kazaki-Maher, Toro, Mondul, Branche re: Aleman	Anderson	240		FRE 402, 802
12	Email - 2014-3-27 -Anderson re: Aleman Complaint	ECF No.	85		FRE 802, contains medical PII
13	Email - 2014-9-12 - Anderson to Carasa, Mondul and Nunez re: retaliation and discrimination	Anderson	304-306		FRE 402, 802
14	Email 8/17/14 -Anderson to Motal re: cancellation of promotion to SW II	Anderson	263		FRE 802
15	Email Anderson to Carasa re: discrimination 2014-10-1	Anderson	224-227		FRE 402, 403, 802
16	Email Anderson to Carasa re: discrimination 2014-9-21	Anderson	310-311		FRE 402, 403, 802
17	Email Anderson to Jimenez re: discrimination - 2014-9-21	Anderson_D	880		FRE 402, 403, 802
18	Email Anderson to Marshall re: discrimination 2014-8-25	Anderson	284-289		FRE 402, 403, 802
19	Email Anderson to Mondul re: cancellation of promotion	Anderson	534		FRE 402, 802
20	Email Anderson to Nadal re: grievance - 2014--8-18	Anderson	523		FRE 402, 403, 802
21	Email Anderson to Williams and Marshall re: discrimination 2014-10-15	Anderson	232-234		FRE 402, 802
22	Email Mondul to Branche re: Anderson's promotion	Anderson	532		FRE 802

23	Emails - 2011 re: supervision	Anderson	195-205		FRE 402, 802
24	Employee List	Anderson_D	2171-2175	*	FRE 402, 403, 802
25	Employment Interview Report - Erickson 3/7/14	Anderson_D	3696-3697	**	
26	Employment Interview Report - Horowitz 5/14/14	Anderson_D	3608-3609	**	
27	Employment Interview Report - Jones-Burton	Anderson_D	3550-3551	**	
28	Equal Employment Opportunity Program and Affirmative Action Plan - Aviles 3/21/12	Anderson	768-772	*	FRE 402, 403, 802
29	Evaluation- 2013-12-20 - Prepared by Helen Esanbor	Anderson_D	1440-1447	*	FRE 402, 403, 802
30	Evaluation- 2015-2-15 - Prepared by Kazaki-Maher	Anderson_D	1415-1423	*	FRE 402, 403, 802
31	Evaluation- 2015-2-5 - Prepared by Kazaki-Maher	Anderson_D	1406-1414	*	FRE 402, 403, 802
32	Evaluation prepared by Esanbor 11/29/13	Anderson	566-573	*	FRE 402, 403, 802
33	Evaluation prepared by Esanbor 8/29/13	Anderson_D	1448-1455	*	FRE 802
34	Evaluation-2015-1-16 - Prepared by Kazaki-Maher	Anderson_D	1432-1439	*	FRE 402, 403, 802
35	Evaluation-2015-1-16 - Prepared by Kazaki-Maher	Anderson_D	1424-1431	*	FRE 402, 403, 802
36	Functional Job Description - 2015-3-4	Anderson_D	1482-1484	**	
37	Functional Job Description - Anderson - 2013-12-20	Anderson_D	1491-1493	**	
38	Functional Job Description - Anderson - 2015-3-4	Anderson	638-640	**	
39	Functional Job Description - Anderson 1/23/15	Anderson	591-593	**	
40	Functional Job Description - Anderson 12/27/11	Anderson_D	1636-1638	**	
41	Functional Job Description - MCU - Erickson 12/13/14	Anderson_D	3679-3681	**	
42	Functional Job Description - MICA	Anderson_D	3659-3661	**	
43	Functional Job Description - Undated (11/29/13??)		676-677		FRE 402
44	Grievance - 2014- 8-11 - by Anderson against Motal	Anderson_D	903	*	FRE 402, 403, 802

45	Grievance -2015-2-23 -by Anderson against Robinson, Nadal, Johnson re: involuntary transfer to Psychiatric Unit and retaliation.	Anderson_D ; Anderson	994-9951019, 1001-1002	*	FRE 402, 403, 802
46	HHC Personnel Rules and Regulations	Anderson	861-941	*	FRE 402, 403, 802
47	HR Position Description - Social Workers	Anderson_D	351-360	**	
48	Informal Complaint Procedure	Anderson_D	248-251	*	FRE 402, 403, 802
49	Informal Complaint Procedure - Complaint Intake Form	Anderson_D	252-254	*	FRE 402, 403, 802
50	Intro to Clinical Supervision OASAS	Anderson	1516-1530		FRE 402, 403, 802
51	Job Applications within HHC	Anderson	347-351		FRE 402
52	Job Description - Social Worker Lvl III Behavioral Health Inpatient	Anderson_D	3663	**	
53	Job Description - Social Worker Lvl III Mobile Crisis Service	Anderson_D	1811	**	
54	Letter - 2012-12-23- Justification for Promotion from Social Worker I to Social Worker II for the PASA Program	Anderson_D	3738-3742	**	
55	Letter - 2017-7-21 - Anderson to Marrero re: resignation	Anderson_D	1840	*	FRE 402
56	Letter -2015-2-19 - Nadal to Anderson - Involuntary Reassignment to Inpatient Psychiatric Unit	Anderson_D	1000	**	
57	Letter from Rountree re: reasonable accommodation 2015-12-28	Anderson_D	1095		FRE 402, 403, 702, 802
58	Letter from Rountree re: reasonable accommodation 2015-9-24	Anderson_D	971		FRE 402, 403, 702, 802
59	Letter Green to HHC re: transfer Anderson - 2016-2-6	Anderson	13		FRE 402, 403, 702, 802
60	Letter Green to HHC re: transfer Anderson - 2016-6-13	Anderson	14		FRE 402, 403, 702, 802

61	Letter Phillips to Anderson re: no transfer - 2015-10-13	Anderson_D	970	*	FRE 402, 403, 802
62	Letter-2015-10-13 - Phillips to Anderson re: Request for Reasonable Accommodations	Anderson_D	970	*	FRE 402, 403, 802
63	Letter-2015-10-19-Rountree re: Reasonable Accommodations	Anderson	31		FRE 402, 403, 702, 802
64	Letter-2015-6-23-Rountree re: Reasonable Accommodations	Anderson_D	976		FRE 402, 403, 702, 802
65	Letter-2017-6-23-Rountree re: Reasonable Accommodations	Anderson	33		FRE 402, 403, 702, 802
66	Non-Discrimination For Persons with Disabilities 12/9/08	Anderson_D	237-239	*	FRE 402, 403, 802
67	OASAS Counselor Scope of Practice	ECF No.	180-13		FRE 402, 403, 802
68	Operating Procedure No. 20-10-Employee Performance and Conduct	Anderson_D	200-206	*	FRE 402, 403, 802
69	Operating Procedure No. 20-16 - Recruitment for Vacant Positions Through Posting, Advertisement, and Recruitment Agencies	Anderson	1658-1662	*	FRE 402, 403, 802
70	Organizational Charts	Anderson_D	367-370	*	FRE 402
71	Patient Safety Alert	Anderson	460-463		FRE 402, 403, 802
72	Personnel Requisition -Burton-Jones	Anderson_D	3530	**	
73	Phillips - Notes	Anderson_D	974-975, 956-957, 898	*	FRE 402, 403, 802
74	Request for a Transfer Form - Blank	Anderson	942	*	FRE 402, 403, 802
75	Request for Leave and Approved Absence - Denied by Kazaki-Maher on 11/26/14	Anderson	366	**	
76	Request for Leave and Approved Absence - Denied by Kazaki-Maher on 11/26/14	Anderson	364	**	
77	Request for Leave of Approved Absence - Aleman 2014-11-24	Anderson_D	414	**	

78	Request for Leave of Approved Absence -Burwell	Anderson	365	**	
79	Resume - Anderson - MCU Application	Anderson_D	1813-1815	**	
80	Resume - Burton	Anderson_D	3556-3558	**	
81	Resume - Erickson	Anderson_D	1817-1818	**	
82	Resume - Horowitz	Anderson	492-493		FRE 402
83	Resume - Kazaki-Maher	Anderson	1164-1166		FRE 402
84	Salary Range for Social Workers	Anderson_D	3678	*	FRE 402, 802
85	US DOH	ECF No.	180-59		FRE 402, 403, 802
86	Spreadsheet - Social Worker Promotions	Anderson_D	3732-3733	*	FRE 402, 403
87	HR Spreadsheet - Cancellation of Anderson's Promotion	Anderson_D	3734-3735	*	FRE 402, 403
88	Personnel Requisition Form No. 14-328 re: plaintiff's promotion from Social Worker Level I to Social Worker Level II	Anderson_D	3736	*	FRE 402, 403
89	Personnel Requisition Form No. 15-159 re: plaintiff's promotion from Social Worker Level I to Social Worker Level II	Anderson_D	3744	*	FRE 402, 403

Defendants' Exhibits⁴:

Ex.	Bates No.	Description	Objections	Basis
A	ANDERSON_D001491-1493	Functional Job Description of Alexander Anderson, dated December 20, 2013	**	
B	ANDERSON_D000351 - 360	HHC Social Worker Position Description	**	
C	ANDERSON_D000367-370	Organizational Charts from 2013-2016	**	

⁴ Pursuant to the Court's Individual Rules, Defendant does not include exhibits which it intends to use for purposes of impeachment or rebuttal. Further, Defendant reserves the right to amend and/or supplement this document at a later time in accordance with all applicable laws and rules and with permission of the Court. Defendant reserves its right to offer any of the exhibits identified by Plaintiff

D	ANDERSON_D003631	Letter re: Horowitz promotion, dated April 4, 2014	*	FRE 402, 403, 802
E	ANDERSON_D003607	Applicant referral re: Horowitz	**	
F	ANDERSON_D003608-3609	Employment interview report re: Horowitz	**	
G	ANDERSON_D001811	Job posting for MCU position dated January 17, 2014	**	
H	ANDERSON_D001812 - 1815	Plaintiff's Applicant Profile and Resume for MCU position	**	
I	ANDERSON_D001816-1818	Jessica Erickson's Applicant Profile and Resume for MCU position	**	
J	ANDERSON_D003696-3697	Employment interview report re: Jessica Erickson	**	
K	ANDERSON_D003695	Applicant referral re: Jessica Erickson	**	
L	ANDERSON_D003531	Memo re: Burton-Jones promotion request dated February 17, 2015	**	
M	ANDERSON_D003530	Personnel Requisition Form No. 15-491 re: Burton-Jones	**	
N	ANDERSON_D003549	Applicant Referral re: Burton-Jones, dated April 17, 2015, and Employee Interview Report, dated February 20, 2015	**	
O	ANDERSON_D003556-3558	Burton-Jones' Resume	**	
P	ANDERSON_D001000	Memo dated February 19, 2015, re: Plaintiff's reassignment from PASA to Inpatient Psychiatric Service Unit 10C	**	

Q	ANDERSON_D003736	Personnel Requisition Form No. 14-328 re: plaintiff's promotion from Social Worker Level I to Social Worker Level II	**	
R	ANDERSON_D001456	Action Plan for Improvement re: Evaluation period 8/29/12 to 8/23/18	*	FRE 402, 403, 802
S	ANDERSON_D001448-1455	Plaintiff's Performance Evaluation for period 8/29/12 to 8/28/13	**	
T	ANDERSON_D003738-3739	Memorandum re: Anderson Promotion Request, dated December 23, 2013	**	
U	ECF Dkt. No. 179-19	Email from Plaintiff to Alexander Aleman, dated March 27, 2014	**	
V	ANDERSON_D000263	Emails between Plaintiff and Motal, dated August 7, 2014	**	
W	ANDERSON_D003744	Personnel Requisition Form No. 15-159	**	
X	ANDERSON_D000403	Memorandum re: Burwell reassignment, dated March 27, 2015	*	FRE 402, 403 and 802
Y	Anderson0366	Plaintiff's Request for Leave or Approved Absence, dated November 26, 2014	**	
Z	ANDERSON_D000414	Aleman Request for Leave or Approved Absence Form, dated November 24, 2014	**	
AA	Anderson0365	Burwell Request for Leave or Approved Absence Form, dated December 8, 2014	**	
BB	Anderson_D001840	Plaintiff's Resignation Letter, dated July 21, 2017	**	

Dated: New York, New York
July 2, 2021

Respectfully submitted,

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By: /s/
Delmas A. Costin, Jr.

By: /s/
J. Kevin Shaffer

SO ORDERED:

Hon. George B. Daniels, U.S.D.J.